

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

SA MUSIC LLC, et al.,

Plaintiffs,

V.

AMAZON.COM, INC., et al.,

Defendants.

Case No. 20-cv-0105-BAT

[PROPOSED] ESI STIPULATION

RAY HENDERSON MUSIC CO., INC.

Plaintiff,

1

AMAZON.COM, INC., et al.,

Defendants.

Case No. 20-cv-0106-BAT

[PROPOSED] ESI STIPULATION

FOUR JAYS MUSIC COMPANY, et al.,

Plaintiffs,

V.

AMAZON.COM, INC., et al.,

Defendants.

Case No. 20-cv-0107-BAT

[PROPOSED] ESI STIPULATION

Plaintiffs SA Music LLC, William Kolbert as Trustee of the Harold Arlen Trust, Ray Henderson Music Co., Inc., Four Jays Music Company and Julia Riva

[PROPOSED] ESI STIPULATION
Case No. 20-cv-0105-BAT
Case No. 20-cv-0106-BAT
Case No. 20-cv-0107-BAT

MANN LAW GROUP PLLC
1420 Fifth Avenue – Suite 2200
Seattle, WA 98101
Telephone: (206) 436-0900

1 (collectively, "Plaintiffs") and Defendants Amazon.com, Inc., Amazon Digital
 2 Services LLC, and Valleyarm Distribution Limited (collectively, "Defendants") and,
 3 hereby agree that the following procedures shall govern discovery of Electronically-
 4 Stored Information ("ESI") in these three cases:

5 **1. Custodians and search terms.** The parties agree that in responding to an
 6 initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer
 7 about methods to search ESI in order to identify ESI that is subject to production in
 8 discovery and filter out ESI that is not subject to discovery. ESI, including, but not
 9 limited to electronic files and email, and subject to the limitations set forth in Section 2
 10 of this Stipulation, shall be collected for each individual custodian from the personal
 11 computers those individuals use for work purposes. The parties shall make good faith
 12 efforts to identify up to 10 appropriate custodians per party and produce ESI from
 13 those custodians on an agreed upon schedule.

14 **2. Data Sources Not Reasonably Accessible.** The following data sources
 15 are not reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ.
 16 P. 26(b)(2)(B) and ESI from these sources will be preserved pursuant to normal
 17 business retention, but not searched, reviewed, or produced: (i) backup systems and/or
 18 tapes used for disaster recovery; (ii) systems, server and network logs; and (iii)
 19 systems no longer in use that cannot be accessed. Among the sources of data the
 20 parties agree are not reasonably accessible, the parties agree not to search or collect the
 21 following: (i) voice messages; (ii) information from handsets, mobile devices, personal
 22 digital assistants, and tablets that is duplicative of information that resides in a
 23 reasonably accessible data source; (iii) instant messaging and chat application data;
 24 (iv) automatically saved versions of documents and emails; (v) deleted, slack,
 25 fragmented, or other data accessible only by forensics; (vi) random access memory
 26 (RAM), temporary files, or other ephemeral data that are difficult to preserve without
 27 disabling the operating system; (vii) on-line access data such as temporary internet
 28 files, history, cache, cookies, and the like; (viii) dynamic fields of databases or log files

1 that are not retained in the usual course of business; and (ix) data in metadata fields
 2 that are frequently updated automatically, such as last opened dates.

3 **3. Proportionality.** The parties are expected to use reasonable, good faith
 4 and proportional efforts to preserve, identify and produce relevant information
 5 consistent with Fed. R. Civ. P. 26(b)(1). This includes identifying appropriate limits to
 6 discovery, including limits on custodians, identification of relevant subject matter, time
 7 periods for discovery and other parameters to limit and guide preservation and
 8 discovery issues. A party's meaningful compliance with this order and efforts to
 9 promote efficiency and reduce costs will be considered in cost-shifting determinations.

10 **4. Liaisons.** The parties will, within 30 days of this Stipulation, identify
 11 liaisons to each other who are and will be knowledgeable about and responsible for
 12 discussing their respective ESI. Each e-discovery liaison will be, or have access to
 13 those who are, knowledgeable about the technical aspects of e-discovery, including the
 14 location, nature, accessibility, format, collection, search methodologies, and
 15 production of ESI in this matter. The parties will rely on the liaisons, as needed, to
 16 confer about ESI and to help resolve disputes without court intervention. The parties
 17 further agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if
 18 appropriate, they will meet and confer about methods to search ESI in order to identify
 19 ESI that is subject to production in discovery and filter out ESI that is not subject to
 20 discovery.

21 **5. Filtering.** Each party will use its best efforts to filter out common system
 22 files and application executable files by using a commercially reasonable hash
 23 identification process. Hash values that may be filtered out during this process are
 24 located in the National Software Reference Library (“NSRL”) NIST hash set list.
 25 Additional culling of file types based on file header information may include, but are
 26 not limited to: Application Package File, Backup Files, Batch Files, Binary Disc
 27 Image, C++ File Formats, Cascading Style Sheet, Configuration File, Database File,
 28 Dictionary Files, Dynamic Link Library, Event Log Files, Executable Files, Hypertext

1 Cascading Stylesheet, Java Archive Files, JavaScript files, JavaScript Source Code and
 2 Class Files, Macintosh Resource Fork Files, Package Manager Files, Program Files,
 3 Program Installers, Python Script Files, Quicktime Files, Shell Script Files, System or
 4 Temporary Files, Thumbnail Cache Files, Troff Files, TrueType Font Files, Video
 5 Media Files, Waveform Audio File Format, Windows Cabinet File, Windows
 6 Command Files, Windows File Shortcut, Windows Help Files, Windows Metafiles and
 7 Enhanced Metafiles, Windows Spool Files, Windows System File. Source code files
 8 will be provided according to the Protective Order and not included in custodial data
 9 productions. A party is required to produce only a single copy of a responsive
 10 document, and a party may de-duplicate responsive ESI across Custodians. A party
 11 may also de-duplicate email threads and attachments as follows: In an email thread,
 12 only the most evolved responsive email in a thread will be produced. Where an
 13 earlier-in-thread email has a responsive attachment not contained within the most
 14 evolved responsive email, the most evolved earlier-in-thread email containing the
 15 attachment will also be produced along with its attachment.

16 **6. Format for production of documents – documents existing in**
 17 **electronic format.** Except as otherwise provided for in this Stipulation, all documents
 18 existing in electronic format shall be produced in multiple page, searchable PDF or
 19 single page TIFF format at a resolution of at least 300 dpi in accordance with the
 20 following:

21 **A.** PDF and TIFF files shall be produced along with Concordance/
 22 Opticon image load files that indicate the beginning and ending of each document.

23 **B.** PDF files shall be produced with extracted text files.

24 **C.** For documents which already exist in PDF format prior to
 25 production (i.e., which the producing party receives from a client or third party in PDF
 26 format), the producing party may provide them in that same PDF format, whether
 27 searchable or non-searchable. For documents converted to PDF format prior to

1 production, the producing party shall make reasonable efforts to convert to searchable
 2 PDF.

3 **D. Metadata.** Load files should include, where applicable, the
 4 information listed in the Table of Metadata Fields, attached as Exhibit A. However,
 5 neither side is obligated to produce metadata that does not exist. Nor are the parties
 6 obligated to include metadata for any document that does not contain such metadata in
 7 the original, if it is not possible to automate the creation of metadata when the
 8 document is collected. The parties reserve their rights to object to any request for the
 9 creation of metadata for documents that do not contain metadata in the original.

10 The metadata file shall be delimited according to the following characters:

11

- 12 • Delimiter = ¶ (ASCII:020)
- 13 • Text-Qualifier = ¢ (ASCII:254)
- 14 • New Line = ® (ASCII:174)
- 15 • Multi-value delimiter - ; (ASCII Code 059)

16 **E. Production media and encryption of productions.** Unless
 17 otherwise agreed, the parties shall provide document productions in the following
 18 manner: The producing party shall provide the production data on CDs, DVDs,
 19 external hard drives or SFTP, as appropriate. When a Defendant is the producing party,
 20 it may choose to encrypt the production data, and if it does, it shall forward the
 21 password to decrypt the production data separately from the CD, DVD, external drive,
 22 or SFTP to which the production data is saved.

23 **F. Bates Numbering.** All images must be assigned a unique Bates
 24 number that is sequential within a given document and across the production sets.

25 **G. Confidentiality Designation.** Responsive documents in PDF or
 26 TIFF format will be stamped with the appropriate confidentiality designations in
 27 accordance with the Protective Order in this matter. Each responsive document
 28 produced in native format will have its confidentiality designation identified in the
 filename of the native file.

H. Redaction Of Information. If documents are produced containing redacted information, an electronic copy of the original, unredacted data shall be securely preserved in such a manner so as to preserve without modification, alteration or addition the content of such data including any metadata therein.

7. Format for production of documents – hardcopy or paper documents.

All documents that are hardcopy or paper files shall be scanned and produced in the same manner as documents existing in electronic format, above.

8. Source code. Source Code shall not be produced in this case.

9. Parent and child emails. The parties shall produce email attachments sequentially after the parent email.

10. Native files. The parties will meet and confer to discuss requests for the production of excel files in native format, on a case-by-case basis. If the parties are unable to reach agreement with regard to requests for additional documents in native-file format, the parties reserve the right to seek relief from the Court. To the extent any documents are produced natively, they shall be represented in the set of imaged documents by a slipsheet indicating the production identification number and confidentiality designation for the native file that is being produced.

11. Databases. Certain types of databases are dynamic in nature and will often contain information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Thus, a party may opt to produce relevant and responsive information from databases in an alternate form, such as a report or data table. These reports or data tables will be produced in a static format.

12. Requests for hi-resolution or color documents. The parties agree to respond to reasonable and specific requests for the production of higher resolution or color images. Nothing in this Stipulation shall preclude a producing party from objecting to such requests as unreasonable in number, timing or scope, provided that a producing party shall not object if the document as originally produced is illegible or difficult to read. The producing party shall have the option of responding by

1 producing a native-file version of the document. If a dispute arises with regard to
 2 requests for higher resolution or color images, the parties will meet and confer in good
 3 faith to try to resolve it.

4 **13. Foreign language documents.** All documents shall be produced in their
 5 original language. Where a requested document exists in a foreign language and the
 6 producing party also has an English-language version of that document that is not
 7 otherwise privileged and that it prepared for non-litigation purposes prior to filing of
 8 the lawsuit, the producing party shall produce both the original document and all
 9 English-language versions. In addition, if the producing party has a certified
 10 translation of a foreign-language document that is being produced, (whether or not the
 11 translation is prepared for purposes of litigation) the producing party shall produce
 12 both the original document and the certified translation. Nothing in this agreement
 13 shall require a producing party to prepare a translation, certified or otherwise, for
 14 foreign language documents that are produced in discovery.

15 **14. Documents Protected from Discovery.** Pursuant to Fed. R. Evid.
 16 502(d), the production of a privileged or work-product-protected document is not a
 17 waiver of privilege or protection from discovery in this case or in any other federal or
 18 state proceeding. Disclosures among Defendants' attorneys of work product or other
 19 communications relating to issues of common interest shall not affect or be deemed a
 20 waiver of any applicable privilege or protection from disclosure. For example, the
 21 mere production of privileged or work-product-protected documents in this case as part
 22 of a mass production is not itself a waiver in this case or in any other federal or state
 23 proceeding. A producing party may assert privilege or protection over produced
 24 documents at any time by notifying the receiving party in writing of the assertion of
 25 privilege or protection. Information that contains privileged matter or attorney work
 26 product shall be returned immediately if such information appears on its face to have
 27 been produced or if requested. Activities undertaken in compliance with the duty to
 28 preserve information are protected from discovery under Fed. R. Civ. P. 26(b)(3)(A)

1 and (B). Nothing in this Stipulation shall be interpreted to require disclosure of
2 irrelevant information or relevant information protected by the attorney-client
3 privilege, work-product doctrine, or any other applicable privilege or immunity. The
4 parties do not waive any objections to the production, discoverability, admissibility, or
5 confidentiality of documents and ESI.

6 **15. Preservation.** The parties have discussed and understand their
7 preservation obligations and needs and agree that preservation of potentially relevant
8 ESI will be reasonable and proportionate, and state as follows:

9 **A.** The parties have begun discussing the types of ESI they believe
10 should be preserved and will discuss the custodians, or general job titles or
11 descriptions of custodians, for whom they believe ESI should be preserved. The parties
12 will continue to meet and confer on these topics, and shall add or remove custodians as
13 reasonably necessary;

14 **B.** The parties represent that they have exercised reasonable diligence
15 to take steps to preserve reasonably accessible ESI relating to the issues relevant to this
16 action and distribute document retention notices to custodians who are likely to have
17 relevant documents;

18 **C.** The parties shall promptly meet and confer during the pendency of
19 this litigation if any issues arise regarding the burden, cost, or accessibility of
20 preserving, searching, reviewing, or producing ESI.

21 **16. Modification.** This Stipulation may be modified by a Stipulation of the
22 parties or by the Court for good cause shown. Any such modified Stipulation will be
23 titled sequentially as follows, "First Modified [Proposed] ESI Stipulation," and each
24 modified Stipulation will supersede the previous Stipulation.

1 Dated: New York, New York
2 September 10, 2020

3 MANN LAW GROUP PLLC

4 By: /s/ Philip P. Mann
5 Philip P. Mann, WSBA No: 28860
6 1420 Fifth Avenue, Suite 2200
7 Seattle, Washington 98101
8 Phone: (206) 436-0900
9 E-mail: phil@mannlawgroup.com

10 SCHWARTZ, PONTERIO & LEVENSON, PLLC
11 Matthew F. Schwartz * *Pro Hac Vice*
12 Brian S. Levenson * *Pro Hac Vice*
13 134 West 29th Street, Suite 1001
14 New York, New York 10001
15 Phone: (212) 714-1200
16 Email: mschwartz@splaw.us
17 Email: blevenson@splaw.us

18 GISKAN SOLOTAROFF & ANDERSON LLP
19 Oren S. Giskan * *Pro Hac Vice*
20 90 Broad Street, 10th Floor
21 New York, New York 10004
22 Telephone: (212) 847-8315
23 E-mail: ogiskan@gslawny.com

24 *Attorneys for Plaintiffs*

25 PERKINS COIE LLP

26 By: s/ Holly M. Simpkins
27 Holly M. Simpkins, WSBA #33297
28 1201 Third Avenue, Suite 4900
Seattle, WA 98101
Telephone: (206) 359-8000
E-mail: HSimpkins@perkinscoie.com

29 KING & SPALDING LLP
30 Kenneth L. Steinthal * *Pro Hac Vice*
31 101 Second Street, Suite 2300
32 San Francisco, CA 94105
33 Telephone: (415) 318-1200
34 E-mail: ksteinthal@kslaw.com

35 *Attorneys for Defendants Amazon.com, Inc. and*
36 *Amazon Digital Services, LLC*

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NEWMAN DU WORS LLP

By: s/Derek A. Newman
Derek A. Newman, WSBA No. 26967
Rachel J. Horvitz, WSBA No. 52987
2101 Fourth Avenue, Suite 1500
Seattle, WA 98121
Telephone: (206) 274-2800
Email: dn@newmanlaw.com
Email: rachel@newmanlaw.com

PERKOWSKI LEGAL, PC
Peter Perkowski * *Pro Hac Vice*
Matthew P. Kelly * *Pro Hac Vice forthcoming*
445 S. Figueroa Street - Suite 3100
Los Angeles, CA 90071
Telephone: 213.426.2137
Email: peter@perkowskilegal.com
Email: matt@perkowskilegal.com

*Attorneys for Defendant
Valleyarm Distribution Limited*

EXHIBIT A**TABLE OF METADATA FIELDS**

<u>Field Name</u>	<u>Specifications</u> <u>Field Name</u>	<u>Field Type</u>	<u>Description</u> (Email)	<u>Description (E-Files/Attachments)</u>
BegDoc	Unique ID (Bates number)	Paragraph	The Document ID number associated with the first page of an email.	The Document ID number associated with the first page of a document
EndDoc	Unique ID (Bates number)	Paragraph	The Document ID number associated with the last page of an email.	The Document ID number associated with the last page of a document.
BegAttach	Unique ID (Bates number) Parent-Child Relationships	Paragraph	The Document ID number associated with the first page of a parent email.	The Document ID number associated with the first page of a parent document.
EndAttach	Unique ID (Bates number) Parent-Child Relationship	Paragraph	The Document ID number associated with the last page of the last attachment to a parent email.	The Document ID number associated with the last page of the last attachment to a parent document.
Pages	Pages	Number	The number of pages for an email.	The number of pages for a document.
DateSent		Date (MM/DD/YYYY format)	The date the email was sent.	For email attachments, the date the parent email was sent.

1	Author	Author Display Name (e-mail)	Paragraph	The display name of the author or sender of an email.	The name of the author as identified by the metadata of the document.
2	To	Recipient	Paragraph	The display name of the recipient(s) of an email.	The display name of the recipient(s) of a document (e.g., fax recipients).
3	CC	CC	Paragraph	The display name of the copyee(s) of an email.	
4	BCC	BCC	Paragraph	The display name of the blind copyee(s) of an email.	
5	Subject	Subject (e-mail)	Paragraph	The subject line of an email.	The subject of a document from entered metadata.
6	Custodian	Custodian	Paragraph	The custodian of an email.	The custodian of a document.